

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

DONALD J. TRUMP, *in his official capacity as President of the United States*; ALEX M. AZAR II, *in his official capacity as Secretary of Health and Human Services*; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; STEVEN T. MNUCHIN, *in his official capacity as Secretary of the Treasury*; UNITED STATES DEPARTMENT OF THE TREASURY; RENE ALEXANDER ACOSTA, *in his official capacity as Secretary of Labor*; and UNITED STATES DEPARTMENT OF LABOR,

No. 2:17-cv-04540-WB

Defendants,

and

LITTLE SISTERS OF THE POOR, SAINTS PETER AND PAUL HOME,

Intervenor-Defendant.

MOTION TO LIFT STAY OF DISTRICT COURT PROCEEDINGS

Plaintiff the Commonwealth of Pennsylvania respectfully moves to lift the stay entered in this matter on February 8, 2018 (ECF No. 73). In support of its motion, the Commonwealth states as follows:

1. The Commonwealth filed its complaint in this action on October 11, 2017. The Commonwealth's complaint challenged two Interim Final Rules (the "IFRs") issued by three federal agencies on October 6, 2017. The complaint named as defendants the President of the

United States along with the three federal agencies and their respective secretaries (the “federal defendants”).

2. On December 15, 2017, this Court granted the Commonwealth’s motion for a preliminary injunction and enjoined the federal defendants (with the exception of the President) from enforcing the IFRs. (ECF Nos. 59 & 60.)

3. The federal defendants and Intervenor-Defendant Little Sisters of the Poor, Saints Peter and Paul Home (the “Little Sisters”) both appealed from the grant of the preliminary injunction. The two appeals were subsequently consolidated and are currently pending before the U.S. Court of Appeals for the Third Circuit. *See* Nos. 17-3752 & 18-1253 (3d Cir.).

4. On February 8, 2018, this Court granted the federal defendants’ uncontested motion to stay proceedings pending resolution of the appeals. (ECF No. 73.)

5. On November 7, 2018, while the consolidated appeals were pending and more than 13 months after issuance of the IFRs, the federal defendants issued two new rules that “finalize” the IFRs. These new rules were published in the Federal Register on November 15, 2018, and are scheduled to go into effect January 14, 2019. *See* 83 Fed. Reg. 57,536 & 57,592 (Nov. 15, 2018) (the “final rules”).

6. Following issuance of the final rules, the Commonwealth and the federal defendants filed a joint motion in the Third Circuit to stay the briefing schedule, which was granted on November 20, 2018. The Third Circuit’s order permits the parties to file motions to govern future proceedings in the case on or before November 28, 2018. The parties have worked

to develop a joint proposal to govern future proceedings in the Third Circuit, but have not yet reached agreement on whether and how the appeal should proceed.¹

DISCUSSION

The Commonwealth respectfully requests that the Court lift the stay in this case. “A court has broad discretion in deciding whether to stay or reopen a case pending before it.” *PBI Performance Prod., Inc. v. NorFab Corp.*, No. 05-4836, 2007 WL 81065, at *1 (E.D. Pa. Jan. 5, 2007) (citing *Cost Bros., Inc. v. Travelers Indem. Co.*, 760 F.2d 58, 60 (3d Cir. 1985); *Landis v. North Am. Co.*, 299 U.S. 248 (1936)).

The Court’s preliminary injunction enjoins the federal defendants from enforcing the IFRs. The final rules will become effective on January 14, 2019, and will, by their terms, “finalize” the IFRs. If the final rules are allowed to go into effect fully, the Commonwealth will suffer irreparable harm. Therefore, if this motion is granted, the Commonwealth intends to move for leave to file a supplemental complaint, pursuant to Federal Rule of Civil Procedure 15(d), that challenges the final rules. The Commonwealth further intends to move for a preliminary injunction of the final rules.

Prior to filing this motion, the Commonwealth asked the federal defendants and the Little Sisters for their positions. The federal defendants stated their position as follows: “Defendants intend to respond to Plaintiff’s motion after the parties have filed their motions to govern further proceedings in the Third Circuit by November 28, 2018, because the parties’ proposals will

¹ The federal defendants’ stay motion filed in this Court stated that the parties would file a joint status report after the agency defendants issued new or modified rules or the Third Circuit ruled on the case. See ECF No. 72, at 1. Because the parties have not yet reached agreement on how the case should proceed, the Commonwealth is filing this motion so that this Court will have sufficient time in advance of the January 14, 2019, effective date of the final rules to address the preliminary injunction motion the Commonwealth intends to file.

inform whether it is appropriate for this Court to lift its stay of proceedings pending appeal in light of the issuance of the final rules.” The Little Sisters stated that they are in agreement with the federal defendants’ position.

The Commonwealth contends that further action by this Court will be necessary, regardless of the parties’ positions with respect to the current appeal in the Third Circuit. It therefore respectfully requests that the Court grants its motion and lift the stay in this matter. In addition, the Commonwealth respectfully requests that the Court schedule a status conference at its earliest convenience to facilitate consideration of the final rules in advance of the January 14, 2019, effective date.

CONCLUSION

For the reasons set forth above, the Commonwealth respectfully requests that the Court grant its motion and lift the stay in this matter.

Respectfully submitted,

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania

Dated: November 26, 2018

/s Aimee D. Thomson
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be electronically filed with the Clerk of the Court for the United States District Court for the Eastern District of Pennsylvania using the CM/ECF system, and that service will be effectuated through the CM/ECF system.

Dated: November 26, 2018

/s Aimee D. Thomson
AIMEE D. THOMSON